

Documents from *United States v. Baldinger*, No. 1:18-cr-01965 (D.N.M.)

Prosecution of a prison transport officer under 18 U.S.C. § 242 for sexual assaulting a prisoner and under 18 U.S.C. § 924(c)(1)(A) for knowingly possessing a firearm in furtherance of a crime of violence.

1. Indictment, 06/13/2018
2. Indictment 2, 06/24/2019
3. Plea Agreement, 06/24/2019
4. Government Sentencing Memorandum, 11/04/2019
5. Defense Sentencing Memorandum, 11/05/2019
6. Addendum to Defense Sentencing Memorandum, 11/19/2019
7. Second Addendum to Defense Sentencing Memorandum, 11/20/2019
8. Guilty Plea and Sentence, 11/22/2019

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JUN 13 2018

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

JAMES BALDINGER,)

Defendant.)

CRIMINAL NO. 18-CR- 18-1965 JP

Counts 1 and 2: 18 U.S.C. § 242:
Deprivation of Rights;

Count 3: 18 U.S.C. § 924(c): Possession
of a Firearm in Furtherance of a Crime of
Violence.

INDICTMENT

The Grand Jury Charges:

Introduction

At all times relevant to this indictment:

1. The defendant, **JAMES BALDINGER**, worked as a prisoner transport officer for Prisoner Transportation Services of America (hereafter "PTS").
2. Local jails and prisons throughout the United States of America hired PTS to transport inmates who were arrested pursuant to out-of-state warrants.
3. The defendant, **JAMES BALDINGER**, transported these inmates to the jurisdictions that initially issued the warrants.
4. PTS, by virtue of being hired by local jails and prisons, was required to act in compliance with federal, state, and local laws, including the United States Constitution.
5. The defendant, **JAMES BALDINGER**, by virtue of being a PTS employee, was required to act in compliance with federal, state, and local laws, including the United States Constitution.

6. B.A.W. was a female prisoner who was transported from Dallas County, Texas to Bernalillo County, New Mexico by PTS transport officers.
7. The defendant, **JAMES BALDINGER**, transported B.A.W. for part of her transport, from Kentucky to New Mexico, while acting in his capacity as a prisoner transport officer.
8. Paragraphs one through seven are incorporated by reference in the counts below.

Count 1

On or between July 10, 2017, and July 11, 2017, on one or more occasions, in the District of New Mexico and elsewhere, the defendant, **JAMES BALDINGER**, while acting under the color of law, did digitally penetrate B.A.W.'s vagina against her will, thereby willfully depriving B.A.W. of liberty without due process of law, which includes the right to bodily integrity, a right secured and protected by the Constitution and laws of the United States. This act resulted in bodily injury and included aggravated sexual abuse and the use of a dangerous weapon.

In violation of 18 U.S.C. § 242.

Count 2

On or about July 11, 2017, in the District of New Mexico, the defendant, **JAMES BALDINGER**, while acting under the color of law, did digitally penetrate B.A.W.'s anus against her will, thereby willfully depriving B.A.W. of liberty without due process of law, which includes the right to bodily integrity, a right secured and protected by the Constitution and laws of the United States. This act resulted in bodily injury and included aggravated sexual abuse and the use of a dangerous weapon.

In violation of 18 U.S.C. § 242.

Count 3

On or between July 10, 2017, and July 11, 2017, in District of New Mexico and elsewhere, the defendant, **JAMES BALDINGER**, did knowingly possess a firearm in furtherance of a crime of violence for which he may be prosecuted in a court of the United States, that is, the willful deprivation of B.A.W.'s right to bodily integrity under color of law resulting in bodily injury, and including aggravated sexual abuse and the use of a dangerous weapon, as alleged in Count 1 and Count 2 of this indictment.

In violation of 18 U.S.C. § 924(c)(1)(A).

A TRUE BILL

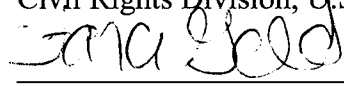
/s/
FOREPERSON OF THE GRAND JURY

JOHN C. ANDERSON
United States Attorney

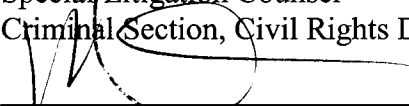


SHAHEEN TORGOLEY
Assistant United States Attorney

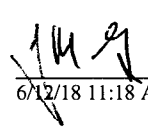
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6/12/18 11:18 AM

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUN 24 2019

MITCHELL R. ELFERS
CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
)
JAMES E. BALDINGER,)
)
Defendant.)

Case No. 18 CR 01965 JAP

Violations: 18 U.S.C. § 242

THE UNITED STATES CHARGES:

INFORMATION

At all times relevant to this Information:

1. Defendant **James E. Baldinger** was employed as a transport officer for Prison Transportation Services of America, LLC (PTS), a private prisoner transport company that contracts with government agencies to transport individuals arrested on out-of-state warrants.
2. As a transport officer working for PTS, Defendant **James E. Baldinger** was required to act in compliance with federal, state and local laws, including the United States Constitution.
3. During the course of his duties, Defendant **James E. Baldinger** transported B.A.W., a female in his custody, on an out-of-state warrant from Kentucky to Bernalillo County, New Mexico.

4. Paragraphs 1 through 3 are hereby incorporated by reference into the count set forth below.

COUNT ONE

On or about July 11 through July 12, 2017, in the District of New Mexico, defendant,

James E. Baldinger

while acting under the color of law, engaged in sexual contact with B.A.W. without her consent, thereby willfully depriving B.A.W. of liberty without due process of law, which includes the right to bodily integrity, a right secured and protected by the Constitution and laws of the United States. The defendant's conduct resulted in bodily injury to B.A.W.

In violation of Title 18, United States Code, Section 242.

JOHN C. ANDERSON
United States Attorney



SHAHEEN TORGOLEY
Assistant United States Attorney

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice



FARA GOLD
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MAURA WHITE
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General Information

Court	United States District Court for the District of New Mexico; United States District Court for the District of New Mexico
Federal Nature of Suit	Criminal
Docket Number	1:18-cr-01965
Status	Closed

Notes

No Notepad Content Found

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UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN 24 2019

MITCHELL R. ELFERS
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES E. BALDINGER,)
)
 Defendant.)

Cr. No. 18 CR 01965 JAP

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico and the United States Department of Justice Civil Rights Division (collectively, "the United States"), the Defendant, James Baldinger, and the Defendant's counsel, Aric Elsenheimer and Angelica Hall:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with his attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
- a. to plead not guilty, or having already so pleaded, to persist in that plea;
 - b. to have a trial by jury; and
 - c. at a trial:
 - 1) to confront and cross-examine adverse witnesses,
 - 2) to be protected from compelled self-incrimination,

- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to the information, charging one felony violation of 18 U.S.C. § 242, Deprivation of Rights Under Color of Law.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose is:

- a. For the violation of 18 U.S.C. § 242, Deprivation of Rights Under Color of Law, charged in the information, imprisonment for a period of not more than ten years, a \$250,000 fine, three years of supervised release, and a \$100.00 mandatory special penalty assessment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- b. Restitution as may be ordered by the Court.

5. The Defendant fully understands that the agreement included in this document determines the sentence in this case and whether the Court accepts the plea described herein and sentences the Defendant as the parties have agreed, is solely in the discretion of the Court. Both parties understand that should the Court choose not to accept this plea agreement, as fully laid out in this document, to include the agreed-upon sentence, the Defendant shall have the right to

withdraw his guilty plea. The United States will withdraw from this plea agreement and the indictment currently pending against the Defendant will not be dismissed, and that the United States may seek a superseding indictment on any and all charges for which the United States can prove beyond a reasonable doubt at trial.

6. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

7. The parties agree that, as part of the Defendant's sentence, the Court will enter, if applicable, an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A.

8. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

9. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

I formerly worked as a transport officer for Prisoner Transportation Services Of America, LLC. (PTS), a private prisoner extradition company that contracts with government agencies to transport detainees. In that capacity, my job was to transport individuals arrested on out-state-warrants to the extraditing jurisdiction. On or about July 11-12, 2017, during a transport from Kentucky to New Mexico, I touched the breasts and vagina of B.A.W., a female inmate in my custody whom I was transporting to Bernalillo County, New Mexico. My actions resulted in injury and pain to B.A.W. B.A.W did not consent to any sexual contact, and in fact, I engaged in this behavior while she was restrained. When I touched B.A.W., I knew my actions were against the law but I did it anyway. I admit that this was a willful violation of B.A.W.'s constitutional rights, and more specifically, a violation of her right to bodily integrity.

10. By signing this Agreement, the Defendant admits that there is a factual basis for each element of the crime to which the Defendant will plead guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence advisory guideline offense level.

STIPULATIONS

11. The United States and the Defendant stipulate as follows:
 - a. The United States has made an agreement with the Defendant pursuant to Rule 11(c)(1)(C), FED.R.CRIM.P., to a term of imprisonment with the Bureau of Prisons of 24 months. The prison sentence will be followed by three (3) years of supervised release. This sentence takes into account acceptance of responsibility.

- b. The parties agree that this sentence is the appropriate in this matter and that the Court will determine whether restitution, and/or a fine is appropriate under the law and facts of the case. Neither party may seek a departure, variance, or deviation of any kind from the agreed upon sentence.
- c. The Defendant will register as a sex offender if the laws and regulations of the state in which he resides mandates such registration.
- d. The Defendant agrees to forfeit his law enforcement certification if he has one, and further agrees to no longer work or seek future employment as a law enforcement officer in any local, state, or federal law enforcement agency. He further agrees not to work as a private security officer or transport officer or work in transport or security in any capacity.
- e. The Defendant further agrees not to possess firearms.
- f. If the Court accepts the plea agreement, it must inform the Defendant, to the extent the plea agreement is of the type specified in Rule 11(c)(1)(C), that the agreed disposition will be included in the judgment and the request binds the Court once the Court accepts the agreement.
- g. The Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any

subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

DEFENDANT'S ADDITIONAL OBLIGATIONS

12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

WAIVER OF APPEAL RIGHTS

13. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence, including any fine, as well as any order of restitution entered by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241 or 2255, or any other extraordinary writ, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver. Defendant's knowing and voluntary waiver of the right to appeal or collaterally attack the conviction and sentence includes waiving the right to raise on appeal or on collateral review any argument that (1) the statute(s) to which the defendant is pleading guilty is unconstitutional and (2) the admitted conduct does not fall within the scope of the statute(s).

OTHER WAIVERS

14. The Defendant agrees and acknowledges with respect to all charges that have been brought against the Defendant that the Defendant is not a “prevailing party” within the meaning of the Hyde Amendment, 18 U.S.C. § 3006A (note), Pub.L. 105-119, Title VI, Sec. 617, Nov. 26, 1997, 111 Stat. 2519. The Defendant further agrees and acknowledges with respect to all charges that have been brought against the Defendant that the position of the United States at no time was vexatious, frivolous or in bad faith as those terms are contemplated by the Hyde Amendment.

GOVERNMENT’S AGREEMENT

15. Provided that the Defendant fulfills the Defendant’s obligations as set out above, the United States agrees that the United States will not bring additional criminal charges against the Defendant arising out of the facts known to the United States as it relates to the transport that is the subject of the information to which the Defendant is pleading guilty, and upon sentencing, the United States will dismiss the pending Indictment.

16. This agreement is limited to the United States Attorney's Office for the District of New Mexico and The United States Department of Justice Civil Rights Division and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

17. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court

will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

18. The Defendant agrees that if the Defendant violates any provision of this Agreement, the United States may declare this Agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

19. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

20. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of the Defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the Defendant and an attorney for the United States.

AGREED TO AND SIGNED this 9TH day of MAY, 2019.

JOHN C. ANDERSON
United States Attorney



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Assistant United States Attorney
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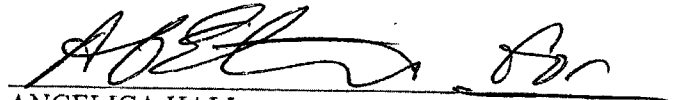
MAURA WHITE
Trial Attorney
U.S. Department of Justice
Civil Rights Division, Criminal Section
601 D ST NW, #5200
Washington, D.C. 20530
(202) 616-5103

I am Aric Elsenheimer, James E. Baldinger's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.



ARIC ELSENHEIMER
Attorney for the Defendant

I am Angelica Hall, James E. Baldinger's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.



ANGELICA HALL
Attorney for the Defendant

This agreement has been read to me in the language I understand best, and I have carefully discussed every part of it with my attorneys. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorneys have advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorneys in this matter.



JAMES E. BALDINGER
Defendant

EXHIBIT A
ADDENDUM TO PLEA AGREEMENT IN
UNITED STATES v. JAMES BALDINGER, CR. NO. 18-1965 JAP

1. This Addendum to the Plea Agreement contains the elements of the offense to which the Defendant, James Baldinger, is pleading guilty.
2. To establish a violation of 18 U.S.C. § 242, Deprivation of Rights Under Color of Law, the government must prove four elements beyond a reasonable doubt:
 - a. that the defendant acted under color of law;
 - b. that the defendant deprived the victim of a right protected or secured by the Constitution or the laws of the United States, i.e. the 14th Amendment's guarantee of substantive due process, which includes the right to bodily integrity;
 - c. that the defendant acted willfully, and
 - d. that the defendant's conduct resulted in bodily injury.

Date: June 24, 2019

JOHN C. ANDERSON
United States Attorney

K. Brawley
KIMBERLY A. BRAWLEY
Assistant United States Attorney

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division, U.S. Department of Justice

K. Brawley for
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K. Brawley for
MAURA WHITE
Trial Attorney
Criminal Section, Civil Rights Division



JAMES BALDINGER

Defendant



ARIC G. ELSENHEIMER

Defense Counsel

General Information

Court	United States District Court for the District of New Mexico; United States District Court for the District of New Mexico
Federal Nature of Suit	Criminal
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Status	Closed

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
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Plaintiff,)	
)	CRIMINAL NO. 18-1965 JP
vs.)	
)	
JAMES BALDINGER,)	
)	
Defendant.)	
)	

UNITED STATES’ SENTENCING MEMORANDUM

The United States of America, through its undersigned prosecutors, files this sentencing memorandum in support of a negotiated resolution between the United States and the defendant. Defendant James Baldinger, a former transport officer with Prisoner Transportation Services of America (“PTS”), comes before the Court for sentencing pursuant to a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). Pursuant to the plea agreement dated June 24, 2019, the defendant entered a guilty plea to a single-count information charging him with a violation of 18 U.S.C. § 242 for willfully depriving B.A.W. of liberty without due process of law by subjecting B.A.W. to unwanted sexual contact, which resulted in bodily injury. The agreement provides for a sentence of two years’ imprisonment followed by three years of supervised release. It also requires the defendant to register as a sex offender if the laws of the state in which he resides so require, and bars him from future employment in law enforcement or in security field.

The plea agreement results in a factually and legally appropriate sentence. It thoroughly accounts for the victim’s well-being and her desired outcome, as well as the defendant’s willingness

to accept responsibility. The United States therefore requests that the Court approve the plea agreement, and sentence the defendant in accordance with its terms.

I. Procedural History

On June 13, 2018, a federal grand jury initially returned a three-count indictment against the defendant arising out of his conduct as a PTS transport officer when he sexually assaulted B.A.W., a female inmate in his custody on several occasions. The indictment charged the defendant with two counts of violating 18 U.S.C. § 242 (Deprivation of Constitutional Rights) and one count of violating 18 U.S.C. § 924(c) (Possession of a Firearm in Furtherance of a Crime of Violence). The § 242 violations alleged that the offenses resulted in bodily injury and included aggravated sexual abuse. The former enhancement made the offenses punishable up to 10 years in prison, and the latter enhancement increased the penalty to up to life in prison.

On June 24, 2019, the defendant entered a guilty plea to the above-referenced information, charging him with one count of violating 18 U.S.C. § 242 (resulting in bodily injury), as part of a plea agreement. (Doc. 61). Should the Court approve the plea agreement, the United States will dismiss the aforementioned indictment.

II. Evidentiary Summary

The defendant was employed by PTS, a private company that provides prisoner transport services for various law enforcement agencies throughout the country. During the victim's transport, the defendant was one of two transport officers or extradition agents, assigned to transport the victim from Kentucky to Bernalillo County, New Mexico, where she had an outstanding warrant. During the transport, the defendant touched the victim's breasts and vagina without her consent and while she was restrained. The defendant's conduct resulted in pain and bodily injury to the victim.

III. Argument

The defendant's guilty plea and the negotiated sentence of two years' imprisonment, followed by three years of supervised release, is sufficient but not greater than necessary to serve the purposes of sentencing under 18 U.S.C. § 3553(a). Although the facts are deplorable, deference to the victim and consideration of the sentencing scheme under 18 U.S.C. § 242 and similar cases within this District guided the government's position and make a two-year sentence appropriate. Furthermore, there is nothing that mitigates, excuses, or somehow justifies the defendant's actions. However, by accepting responsibility and making admissions, his victim, who never thought she would be believed, has finally received validation.

A. Deprivation of Rights: 18 U.S.C. § 242

The defendant has pled guilty to one count of Deprivation of Rights, in violation of 18 U.S.C. § 242. To sustain a guilty plea to a violation of 18 U.S.C. § 242, the defendant admitted that he: (1) acted under color of law; (2) deprived another person of a right secured or protected by the laws of the United States; and (3) acted willfully. Such a violation carries a maximum penalty of one year in jail. Because the defendant admitted that the offense resulted in bodily injury, and the evidence so proves, the penalty increases to ten years in prison.

The evidence supports that the defendant willfully deprived the victim of her right not to be deprived of liberty without due process of law, which includes the right to be free from sexual assault under color of law. However, given the apparent penalty disparities among the possible enhancements and the unpredictability of a jury trial, a two-year sentence is appropriate where the defendant admits full responsibility and the victim is in agreement and would prefer not to withstand the emotional toll of a trial, where her credibility would undoubtedly become the centerpiece of trial even though the defendant victimized her.

B. The Sentencing Guidelines

Although the United States does not disagree with the Sentencing Guidelines as calculated in the Pre-sentence Report (Doc. 68) given the underlying conduct that led to initial conduct, when looking at the conduct to which the defendant admitted pursuant to the plea agreement, the advisory guidelines would be lower. Instead of cross referencing to the section that covers Aggravated Sexual Abuse, § 2H.1 (Deprivation of Rights) would instead cross reference to § 2A3.4(a)(3), Abusive Sexual Contact. The base level would therefore be 12 with an additional two levels because the victim was in the care, custody, or control of the defendant. § 2A3.4(b)(3). The remaining enhancements would remain the same. (Doc. 68, page 8), and the defendant's total offense level instead would be 19, equally a range of 30-37 months. Therefore, given the charge in the information and the facts to which the defendant has pled guilty, although this sentence is a variance, it would only be a variance of six months below the low end of the guidelines.

C. Similarly-Situated Cases in the District of New Mexico

While no two cases or victims are alike, when negotiating a resolution, the United States considers each case individually, and sentences in similar cases within the District of New Mexico help to inform the decision.

For example, In *United States v. Etsitty*, 11-CR-3191 (D.N.M.), the defendant, a police officer, was charged with willfully depriving a female in his custody of her constitutional rights when he drove her into a secluded area in the desert in the middle of the night, groped her, and seemingly tried to rape her. In that case, the victim managed to convince Etsitty not rape her. Etsitty was therefore charged with what would be a misdemeanor punishable up to a year in jail, except for the kidnapping enhancement which made the maximum penalty life in prison. He was also charged with a violation of 18 U.S.C. § 1001 for lying to the FBI. As part of plea negotiations,

the United States dismissed the kidnapping enhancement. The court then imposed a sentence of four and a half years in prison.

In *United States v. Chavez*, 12-CR-3290 (D.N.M.), the defendant, a New Mexico state probation officer, was charged with willfully depriving a female probationer of her constitutional rights for groping her breasts without her consent, a misdemeanor punishable up to a year in jail. Chavez was also charged with lying to the FBI in violation of 18 U.S.C. § 1001. The court imposed a negotiated sentence of 18 months in prison.

In *United States v. Bruce*, 12-CR-678 (D.N.M.), the defendant, a corrections officer, was charged with willfully depriving an inmate of her constitutional rights by engaging in sexual contact when he repeatedly fondled her breasts without her consent, a misdemeanor punishable up to a year in jail. Like Chavez, Bruce also was charged with violating 18 U.S.C. § 1001 for making materially false statements to federal law enforcement. The court imposed a sentence of 12 months and one day.

In *United States v. John Greene*, 14-1142 (D.N.M.), the defendant, a captain at the Gallup-McKinley County Adult Detention Center, groped three female inmates without their consent, and subsequently made material false statements to the FBI. He pled guilty to three misdemeanor counts of violating 18 U.S.C. § 242 and two counts of violating 18 U.S.C. § 1001, and in large part due to severe mental and physical health issues, was sentenced to five years' probation.

As the cases above illustrate, the proposed sentence in this case is commensurate with the sentences imposed in similar circumstances and ensures that there are no sentencing disparities within this District.¹

¹ *But see United State v. Michael Garcia*, 14-1251 (D.N.M) where the defendant, a Las Cruces sex crimes detective, sexually assaulted a student intern and was sentenced to nine years in prison.

D. The Defendant's Acceptance of Responsibility and the Impact of Conviction

While the plea agreement in this case confers a significant benefit on the defendant, this benefit is just the tangential result of an even greater benefit to the victim. The defendant's willingness to acknowledge the wrongfulness of his criminal conduct provides the victim a measure of comfort that little else can provide. Where a jury trial allows the victim of sexual misconduct to be heard, so, too, will the opportunity to speak at a sentencing hearing. Moreover, the victim has already had to endure giving multiple statements to law enforcement and providing testimony at a preliminary hearing in state court. The stress associated with waiting for and then preparing for trial and enduring cross-examination cannot be overstated, especially where the defense presumably will call into question the victim's credibility, as is the case with all sexual assault cases. Yet, here, issues of race, gender, and the victim's struggles with substance abuse will likely be at the fore, and run the risk of implicitly affecting the jury during deliberations.

In addition to the defendant's acceptance of responsibility, the plea agreement in this case accounts for the unique impact of a felony plea on a former pseudo-law enforcement officer. The defendant will never be able to serve in any sort of law enforcement capacity again. As noted by another federal judge in this district, the personal consequences of a felony conviction for a former officer who may no longer seek employment in law enforcement can support a variance. *See United States v. Frazier*, 2013 WL 499245, at *8 (Feb. 4, 2013). Furthermore, while his negotiated sentence is less than the guideline range, it still requires him to remain incarcerated for a significant amount time.

The defendant's conviction and sentence also promote deterrence and respect for the law and adequately protects the public from future crimes by the defendant. Because the defendant will never serve in law enforcement or security again and will likely have to register as a sex offender, the plea agreement ensures he will not be in a position to exploit his power and the trust of the

people whom he served, as he did with the victim. For these reasons, the Court should accept the parties' Rule 11(c)(1)(C) plea agreement.

Because the parties agree that the plea agreement results in a sentence that is sufficient but not greater than necessary, and because the facts and the law support this, the United States respectfully requests that the Court approve the plea agreement and sentence the defendant in accordance with its terms.

Respectfully submitted:

JOHN C. ANDERSON
United States Attorney

/s/ Kimberly A. Brawley
KIMBERLY A. BRAWLEY
Assistant United States Attorney
P.O. Box 607
Albuquerque, NM 87102
(505) 346-7472

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

/s/ Fara Gold
FARA GOLD
Special Litigation Counsel
MAURA WHITE
Trial Attorney
U.S. Department of Justice
Civil Rights Division, Criminal Section
601 D Street NW #5200
Washington, DC 20530
(202) 514-3204

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2019, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:
Aric Elsenheimer, counsel for Defendant.

/s/ Fara Gold

Fara Gold

Special Litigation Counsel

U.S. Department of Justice

Civil Rights Division, Criminal Section

General Information

Court	United States District Court for the District of New Mexico; United States District Court for the District of New Mexico
Federal Nature of Suit	Criminal
Docket Number	1:18-cr-01965
Status	Closed

Notes

No Notepad Content Found

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR 1:18-01965-001 JP

JAMES BALDINGER,

Defendant.

Mr. Baldinger's sentencing memorandum

James Baldinger, by and through undersigned counsel Aric G. Elsenheimer, files this sentencing memorandum, and asks that the Court accept the parties' plea agreement and sentence Mr. Baldinger to a term of 24 months imprisonment.

I. Background

Mr. Baldinger was charged with the instant offense on July 15, 2017, was held in custody for 52 days, and was released on June 25, 2018 to return to his home in Bovey, Minnesota to live with his wife, Holly, and his

two sons, A.B., who is now 19, and N.B., who is 14. He remained on pretrial conditions for almost nearly a year and worked at a gas station in Grand Rapids, MN. During that time, he was fully compliant with his conditions of supervision and had no incidents. On June 24, 2019, Mr. Baldinger returned to New Mexico to enter a guilty plea in this case and voluntarily surrender. He has been in custody since that date.

Mr. Baldinger is 53 years old. He has lived in Bovey, MN for 17 years and has been married to his wife for 24 years. Mr. Baldinger has, apart from the instant charges, no criminal history. He is a loving father and husband and spends his time working, helping his family, and spending time with his family around the home, watching movies and playing games and sports.

II. Argument

A. Mr. Baldinger's background, strong family, and zero criminal history strongly support a sentence of 24 months.

Several features of this case strongly support a sentence of 24 months in custody. First, Mr. Baldinger's history and characteristics demonstrate

that he is a committed father and husband, a good, solid employee, and a man with absolutely zero criminal history prior to this case.

Mr. Baldinger and his wife of 24 years currently live in Grand Rapids, Minnesota, a rural community where Mr. Baldinger worked as a cashier at a local gas station. He has two children, a 19 year old and a 14 year old. His nineteen year old is attending a vocational college in Tennessee and his 14 year old, who is diagnosed with autism, is in the eighth grade. Mr. Baldinger has suffered from some medical complications, but is determined to support his family.

Mr. Baldinger served in the military and was deployed to war, serving in Desert Shield and Desert Storm. When not serving in the military, Mr. Baldinger took on multiple jobs at a time to financially support his family. He worked for approximately nine years at a manufacturing facility and took on a second job as a gas station attendant. In 2017, at the recommendation of friends, he applied for a job as a prisoner transport officer. The job meant good money, but long periods of time away from his family. Mr. Baldinger was employed as a prisoner transport

officer for only three months. He was terminated when the investigation into this case was initiated.

Mr. Baldinger has zero criminal history. Mr. Baldinger last had a speeding ticket in 1993. Few people could compete with such a spotless traffic record.

B. Nature and Circumstance of the Offense

In addition to Mr. Baldinger's history and characteristics, the nature and circumstances of the offense also support a sentence of 24 months. Several features of this case would have made trial problematic for the government. Most notably, the government lost the van where this incident took place—a key piece of evidence. Additionally, many witness statements, including the critical witness B.W., were inconsistent with prior statements, or contradicted by other pieces of evidence—most notably GPS data. Lastly, witnesses located by the defense raised the possibility that B.W. exaggerated Mr. Baldinger's actions in a bid for a financial payout and raised significant questions about the veracity of her statement. Such features of this case drove the parties to pursue a negotiated resolution that

took account of Mr. Baldinger's actions but that did not overly punish him for alleged conduct for which evidence was lacking.

As noted by the Government's Sentencing Memorandum, the negotiated plea results in a factually and legally appropriate sentence. Mr. Baldinger agrees that the agreement accounts for B.W.'s desired outcome as well as Mr. Baldinger's willingness to accept responsibility. While much effort was given by the parties to not categorize the conduct as "unwanted" in the plea agreement, Mr. Baldinger understands that given his position with regard to his transport of B.W. his conduct could never be deemed legally consensual. The Government is also correct that a trial in this matter would have brought forth enduring cross-examination calling into question B.W.'s credibility and her own increasingly exaggerated statements that bring substantial doubt as to her claims. For these reasons, as well as those reasons stated in Mr. Baldinger's sentencing memo, Mr. Baldinger requests the Court accept the parties' negotiated plea and impose a sentence of 24 months to be followed by 3 years of supervised release.

Wherefore, James Baldinger, respectfully requests that the Court accept the parties' plea agreement and impose a sentence of 24 months in custody.

Respectfully Submitted,
FEDERAL PUBLIC DEFENDER
111 Lomas NW, Suite 501
Albuquerque, NM 87102
(505) 346-2489
(505) 346-2494 Fax
aric_elsenheimer@fd.org



Electronically filed November 5, 2019

/s/ Aric G. Elsenheimer

Assistant Federal Public Defender

General Information

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Multiple Documents

Part	Description
1	1 page
2	Exhibit Character Letters (2)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES BALDINGER,

Defendant.

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No. CR 1:18-01965-001 JAP

ADDENDUM TO DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW, Defendant, James Baldinger, by and through his attorney of record, Assistant Federal Defender, Aric G. Elsenheimer, and hereby submits the following documents as an addendum to his previous Sentencing Memorandum, filed November 5, 2019. [Doc. 74]

1. Letter from Paul Baldinger, father; and
2. Letter from Kimber Baldinger, step-mother.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
111 Lomas NW, Suite 501
Albuquerque, NM 87102
(505) 346-2489
(505) 346-2494 Fax
aric_elsenheimer@fd.org


/s/ filed electronically November 19, 2019

ARIC G. ELSENHEIMER, AFD
Attorney for Mr. Baldinger

November 15, 2019

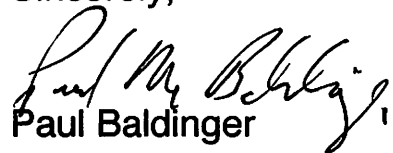
To Whom it May Concern:

It is my wish to go on record for my son James Edward Baldinger. I am 73 years old and I am presently employed with Rochford Reality & Construction Company, Inc for over 30 years. After marriage to Jim's mother, I adopted Jim while he was quite young. Throughout his youth, and teenage years he was caring, generous, and obedient. During high school he continued to be a good student, and keep a steady job with a local grocery. While attending college his reserve unit was activated, and he was deployed with the 82nd Airborne for "Desert Storm".

Jim is married to Holly, and they have two sons, the younger son has autism. Jim and Holly have provided a good home for their family. During the last days of his mother's life he took time from his job, relocated to take care of her until she passed away.

I would trust Jim with my life, and the lives of others without hesitation. He has earned this trust by his consistent good conduct throughout the many years I have know him.

Sincerely,


Paul Baldinger

November 15, 2019

To Whom it May Concern:

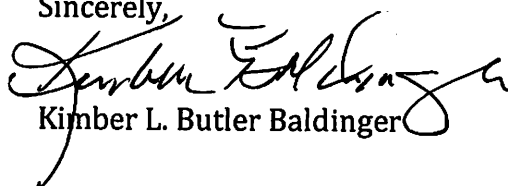
It is my privilege to write this letter on behalf of James E. (Jim) Baldinger. I am 65 years old and a 28-year employee (Bookkeeper & Liturgy Support) of St. Matthew Catholic Church in Franklin, TN. I married Jim's dad, Paul, in 1985; and we are still married today.

Jim graduated high school right before Paul and I married. Even then, he showed a personal "code" that set him apart from his peers—I credit his dad for that. Jim was never in trouble—not in school, not at work, not in his years in the Army during the Gulf War. He has simultaneously held multiple jobs to try and support his family, when work was available, which is difficult in the small town in Minnesota where his family lives. When the plant at which he was working in Minnesota shut its doors, he came to Tennessee and sought work here so he and his family could keep their house. It was important that he maintain a stable environment in Minnesota for his youngest son, Nash, who has autism. He and Holly commuted, texted, skyped and sacrificed, maintaining their family unit—their stable "base" in Minnesota—much like deployed military members do.

I have found Jim to be exceptionally loyal and responsible. He was a "first responder" in the Nashville tornados, spending days helping clear debris and trees so people could return to their homes—all on a volunteer basis. He has a heart for service and shares of himself without asking anything in return.

I will be happy to discuss this letter with anyone at any time. My cell number is 615-481-1783.

Sincerely,


Kimber L. Butler Baldinger

General Information

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Multiple Documents

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1	1 page
2	Exhibit Character Letter (1)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES BALDINGER,

Defendant.

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No. CR 1:18-01965-001 JAP

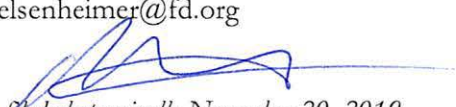
SECOND ADDENDUM TO DEFENDANT’S SENTENCING MEMORANDUM

COMES NOW, Defendant, James Baldinger, by and through his attorney of record, Assistant Federal Defender, Aric G. Elsenheimer, and hereby submits the following documents as an addendum to his previous Sentencing Memorandum, filed November 5, 2019. [Doc. 74]

- 1. Letter from Holly Baldinger, wife.

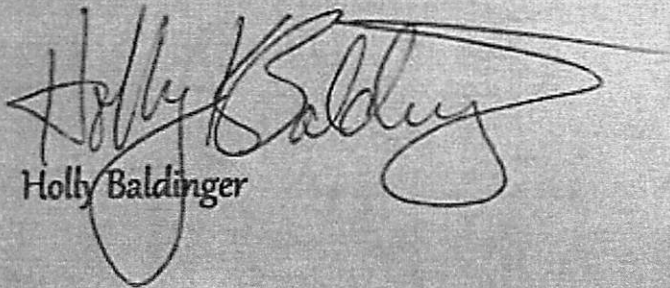
Respectfully submitted,

FEDERAL PUBLIC DEFENDER
111 Lomas NW, Suite 501
Albuquerque, NM 87102
(505) 346-2489
(505) 346-2494 Fax
aric_elsenheimer@fd.org


/s/ filed electronically November 20, 2019
ARIC G. ELSENHEIMER, AFD
Attorney for Mr. Baldinger

Jim and I have been married for 24 years. He is the kindest man I know, next to my father. He values his family more than anything. He puts his needs secondary to the needs of our boys and me. Jim is my partner and a great dad to our boys. He loves our boys and has missed many school events so that our boys are taken care of. He is a valuable community member and a good Samaritan. Jim will always go out of his way to help others when he sees them in need of assistance, whether it is stopping to help someone with vehicle problems, or they ran out of gas and he helps them get to the nearest gas station, or helping the elderly community members with yard work and lawn mowing. He jumps in to help those that need assistance every time he sees them struggling or requiring help. He has worked extra hours when fellow employees call in sick, he has volunteered for extra odd jobs that need to be completed and he always finds work to do instead of standing around and doing nothing. He is a valuable member to society, but most important is that he is needed and loved by his family and we cannot wait for him to come home so that we can lead our "quiet, normal, small-town family" life again.

Sincerely,



Holly Baldinger

General Information

Court	United States District Court for the District of New Mexico; United States District Court for the District of New Mexico
Federal Nature of Suit	Criminal
Docket Number	1:18-cr-01965
Status	Closed

Notes

No Notepad Content Found

UNITED STATES DISTRICT COURT
District of New Mexico

UNITED STATES OF AMERICA

Judgment in a Criminal Case

V.

JAMES BALDINGERCase Number: **1:18CR01965-001JAP**USM Number: **21578-041**Defendant's Attorney: **Aric G. Elsenheimer****THE DEFENDANT:**

- pleaded guilty to count(s) **Information**.
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<i>Title and Section</i>	<i>Nature of Offense</i>	<i>Offense Ended</i>	<i>Count</i>
18 U.S.C. Sec. 242	Deprivation of Rights Under Color of Law	07/12/2017	

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 . The Court has considered the United States Sentencing Guidelines and, in arriving at the sentence for this Defendant, has taken account of the Guidelines and their sentencing goals. Specifically, the Court has considered the sentencing range determined by application of the Guidelines and believes that the sentence imposed fully reflects both the Guidelines and each of the factors embodied in 18 U.S.C. § 3553(a). The Court also believes the sentence is reasonable and provides just punishment for the offense.

- The defendant has been found not guilty on count(s) .
- Count(s) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 21, 2019

Date of Imposition of Judgment

/s/ James A. Parker

Signature of Judge

Honorable James A. Parker**Senior United States District Judge**

Name and Title of Judge

November 22, 2019

Date

DEFENDANT: **JAMES BALDINGER**
CASE NUMBER: **1:18CR01965-001JAP**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **24 months**.

The court makes the following recommendations to the Bureau of Prisons:

**Sandstone Federal Correctional Institution, Sandstone, Minnesota, if eligible or
Duluth Federal Prison Camp, Duluth, Minnesota, if eligible**

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at on .

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to
_____ at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **JAMES BALDINGER**
CASE NUMBER: **1:18CR01965-001JAP**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **3years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(Check, if applicable.)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state, local, or tribal sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(Check, if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, require you to notify that person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.
14. You must undergo a sex offense-specific assessment to determine the level of risk for sexual dangerousness, recidivism, and amenability to treatment and formulate treatment recommendations if treatment is necessary. You may be required to pay all, or a portion of the cost of the assessment.
15. You will waive your right of confidentiality and allow the treatment provider to release treatment records to the probation officer and sign all necessary releases to enable the probation officer to monitor your progress. The probation officer shall disclose the presentence report and/or any previous sex offender or mental health evaluations to the treatment provider.
16. You must submit to a search of person, property, residence, vehicles, documents, businesses, computers [as defined in 18 U.S.C. 1030(e)(1)], and other electronic communications or data storage devices or media effects, at any time, by a probation officer with reasonable suspicion concerning a violation of a condition of probation or supervised release, or unlawful conduct by the person, in the lawful discharge of the officer's supervision functions. You must inform any other occupants that the premises may be subject to searches pursuant to this condition. Failure to submit to a search may be grounds for revocation of supervision.
17. You will not have any direct or indirect contact or communication with the victim or his or her family, or go near or enter the premises where the victim or his or her family resides, is employed, attends school or treatment, except under circumstances approved in advance and in writing by the probation officer.

DEFENDANT: JAMES BALDINGER
CASE NUMBER: 1:18CR01965-001JAP

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You may be required to pay all, or a portion, of the costs of the program.

You shall waive your right of confidentiality and allow the treatment provider to release treatment records to the probation officer and sign all necessary releases to enable the probation officer to monitor your progress. The probation officer may disclose the presentence report, any previous mental health evaluations and/or other pertinent treatment records to the treatment provider.

If recommended in the sex offense-specific assessment, you must begin attending and participating in sex offender treatment consistent with the recommendations of the evaluation. You must follow the rules and regulations of that program. The probation officer, in conjunction with the treatment provider, will supervise your participation in the program (location, modality, duration, intensity, etc.). Furthermore, you must submit to clinical polygraph examinations, as directed by the probation officer and/or treatment provider. You may be required to pay a portion or all of the cost of the assessments and treatment.

You are prohibited from viewing or possessing any material that depicts sexually explicit conduct as defined in 18 U.S.C. 2256, including images, books, writings, drawings, video games, or videos depicting actual sexual intercourse. This also includes computer or computer-generated images or pictures, whether made or produced by electronic, mechanical, or other means. Should the sex offense-specific assessment determine this factor is not a risk, then this condition shall not be enforced.

You will forfeit your law enforcement certification, if you have one, and you will no longer work or seek future employment as a law enforcement officer or jail guard capacity in any local, state or federal law enforcement agency. You will not work as a private security officer or transport officer or work in transport or security in any capacity.

You must not engage in a position of authority or leadership in an occupation, business, profession, volunteer activity, or church setting, over adults with mental or physical disabilities or children without prior approval of the probation officer.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: **JAMES BALDINGER**
CASE NUMBER: **1:18CR01965-001JAP**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

The Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

Totals:	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$100.00	\$	\$0.00	\$ 0.00	\$0.00

The determination of the restitution is deferred until February 21, 2020. An *Amended Judgment in a Criminal Case* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A In full immediately; or

B \$ due immediately, balance due (see special instructions regarding payment of criminal monetary penalties).

Special instructions regarding the payment of criminal monetary penalties: Criminal monetary penalties are to be made payable by cashier's check, bank or postal money order to the U.S. District Court Clerk, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102 unless otherwise noted by the court. Payments must include defendant's name, current address, case number and type of payment.

The Court finds the Mandatory Restitution Act of 1996 is applicable in this case. The Court intends to order restitution; however, restitution has not yet been determined. Therefore, the Court will establish a restitution amount and schedule at a later date.

Based on the defendant's lack of financial resources, the Court will not impose a fine. In lieu of all or a portion of the fine, the Court considered alternative sanctions, such as community service, placement at a residential reentry center, and location monitoring, and concludes the total combined sanction without a fine or alternative is sufficiently punitive.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

General Information

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